A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU APPROVING COASTAL DEVELOPMENT PERMIT NO. 11-019, VARIANCE NO. 13-011 AND SITE PLAN REVIEW NO. 11-008 FOR A 5,820 SQUARE FOOT, TWO-STORY SINGLE-FAMILY RESIDENCE WITH 499 SQUARE FOOT ATTACHED GARAGE, DRIVEWAY, RETAINING WALL, FIRE-DEPARTMENT TURNAROUND, GRADING, DRAINAGE IMPROVEMENTS, LANDSCAPING, SOLIDER PILE SYSTEM AND AN EVAPOTRANSPIRATION ONSITE WASTEWATER TREATMENT SYSTEM, INCLUDING A VARIANCE FOR CONSTRUCTION ON SLOPES IN EXCESS OF 2½ TO 1 AND A SITE PLAN REVIEW FOR CONSTRUCTION IN EXCESS OF 18 FEET IN HEIGHT, LOCATED AT 26714 SEAGULL WAY IN THE SINGLE-FAMILY — MEDIUM DENSITY ZONING DESIGNATION (HAAGEN FAMILY TRUST)

THE PLANNING COMMISSION OF THE CITY OF MALIBU DOES HEREBY FIND, ORDER AND RESOLVE AS FOLLOWS:

Section 1. Recitals.

A. On May 3, 2011, the applicant, Eric Rochen submitted Coastal Development Permit (CDP) No. 11-019, Variance (VAR) No. 13-011 and Site Plan Review (SPR) No. 11-008 on behalf of property owner, Haagen Family Trust to the City for review. The application was routed to appropriate City and County agencies for Local Coastal Program (LCP) conformance review.

B. On June 2, 2011, a Courtesy Notice was mailed to all property owners and occupants within a 500 foot radius of the subject property.

C. On June 24, 2013, a Notice of Coastal Development Permit Application was posted at the site.

D. On June 18, 2013, a site visit to the subject property was conducted to inspect the existing site conditions and to photograph story poles and evaluate potential public and private scenic and visual impacts.

E. On July 15, 2013, the subject application was deemed complete.

F. On July 25, 2013, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500 foot radius of the subject property.

G. On August 19, 2013, the project was continued to September 16, 2013 regular Planning Commission meeting.

H. On September 16, 2013, the project was continued to a date uncertain.
I. On October 24, 2013, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500 foot radius of the subject property.

J. On November 18, 2013, the project was continued to the January 6, 2014 regular Planning Commission meeting.

K. On January 6, 2014, the Planning Commission continued this item to the regularly scheduled meeting of February 3, 2014.

L. On February 3, 2014, the Planning Commission held a duly noticed public hearing on the subject applications, reviewed and considered the staff report, reviewed and considered written reports, public testimony and other information in the record.

Section 2. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Planning Commission has analyzed the proposal as described above. The Planning Commission has also found that the proposed project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment, and therefore, is exempt from the provisions of CEQA. Accordingly, a CATEGORICAL EXEMPTION will be prepared and issued pursuant to CEQA Guidelines Section 15303 — New Construction. The Planning Commission has further determined that none of the six exceptions to the use of a categorical exemption applies to this project (CEQA Guidelines, Section 15300.2).

Section 3. Coastal Development Permit Approval and Findings.

Based on substantial evidence contained within the record and pursuant to Sections 13.7(B) and 13.9 of the LCP Local Implementation Plan (LIP), the Planning Commission adopts the analysis in the agenda report, incorporated herein, the findings of fact below, and approves CDP No. 11-019, VAR No. 13-011 and SPR No. 11-008 for a 5,820 square foot, two-story single-family residence with 499 square foot attached garage, driveway, retaining wall, fire-department turnaround, grading, drainage improvements, landscaping, soldier pile system and an evapotranspiration onsite wastewater treatment system, including a variance for construction on slopes in excess of 2½ to 1 and a site plan review for height in excess of 18 feet.

The proposed project has been reviewed by the City Biologist, City Geologist, City Environmental Health Administrator, City Public Works Department, and the Los Angeles County Fire Department (LACFD). The project is consistent with the LCP's zoning, grading and onsite wastewater treatment requirements. The project has been determined to be consistent with all applicable LCP codes, standards, goals, and policies. The required findings are made herein.
A. General Coastal Development Permit (LIP Chapter 13)

LIP Section 13.9 requires that the following four findings be made for all CDPs.

Finding A1. That the project as described in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified City of Malibu Local Coastal Program.

The proposed project has been reviewed for conformance with the LCP by the Planning Department, City Environmental Health Administrator, City Geologist, City Public Works Department, City Biologist, and the LACFD. The proposed project, as conditioned, conforms to the LCP in that it meets all residential development standards.

Finding A2. The project is located between the first public road and the sea. The project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).

The project is located between the first public road and the sea but will not impact public access or recreation because the project site is located inland and not along the shoreline. The project will not result in significant impacts on public access or recreation. The project conforms to the public access and recreation policies of the Coastal Act of 1976.

Finding A3. The project is the least environmentally damaging alternative.

Pursuant to the California Environmentally Quality Act (CEQA), this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment and is categorically exempt from CEQA. The proposed project would not result in significant adverse effects on the environment, within the meaning of CEQA, and there are no feasible alternatives that would further reduce any impacts on the environment. The proposed project allows for a 5,820 square foot, two-story single-family residence with 499 square foot attached garage, driveway, retaining wall, fire-department turnaround, grading, drainage improvements, landscaping, soldier pile system and an OWTS, all of which are permitted uses within the rural residential zoning classification of the subject property. The project will not result in potentially significant impacts on the physical environment.

Three alternatives were considered to determine which was the least environmentally damaging.

No Project – The no project alternative would avoid any change to the project site, and hence, any change to visual resources. The project site is zoned SF-M which allows for single-family residential development. The no project alternative would not accomplish any of the project objectives; and therefore, is not viable.

Alternative Location – An alternative location could be proposed; however, an alternative location may site the proposed residence in the “Restricted Use Area” or site a larger portion of the residence on steep slopes. Due to the topography and geotechnical constraints of the lot, it is not anticipated that an alternative location would offer significant environmental advantages.
Proposed Project — The subject property is underlain by recently active and prehistoric landslides. The southern portion of the parcel is characterized by steep slopes and is considered a “Restricted Use Area.” Due to the geological constraints on the property, an evapotranspiration OWTS is proposed to minimize the amount of moisture permeating into the ground. Additionally, the proposed project would improve site stability by including a solder pile foundation system.

The selected location has been reviewed and conditionally approved by the City Environmental Health Administrator, City Biologist, City Geologist, City Public Works Department and the LACFD, and meets the City’s residential development policies. Therefore, the project, as proposed, is the least damaging alternative.

Finding A4. If the project is located in or adjacent to an environmentally sensitive habitat area pursuant to Chapter 4 of the Malibu LIP (ESHA Overlay), that the project conforms with the recommendations of the Environmental Review Board, or if it does not conform with the recommendations, findings explaining why it is not feasible to take the recommended action.

Pursuant to the LCP ESHA Overlay Map, the project site is not ESHA or located within an ESHA buffer. Pursuant to LIP Section 4.4.4(E), “new structures within existing, developed neighborhoods where the new structures will be located over 200 feet from an ESHA, as shown on the ESHA overlay map” shall not be subject to the provisions of LIP Section 4.4.2 with regard to the supplemental application requirement of a detailed biological study of the site, and shall not be subject to review by the Environmental Review Board (ERB).

B. Variance for Construction on Slopes in Excess of 2½ to 1 (LIP Section 13.26)

The applicant is requesting a variance from LIP Section 13.27.1(A)(4) which requires construction to be located on slopes less than 2½ to 1. The proposed project includes construction on manufactured slopes created by artificial fill resulting from the construction of Seagull Way. Currently, the Malibu LCP does not differentiate between natural and manufactured slopes; therefore, the proposed project includes a variance for construction on slopes in excess of 2½ to 1. Pursuant to LIP Section 13.26.5, the Planning Commission may approve and/or modify an application for a variance in whole or in part, with or without conditions, provided that it makes ten findings of fact. Based on the evidence in the record, the findings in support of VAR No. 11-014 are made as follows.

Finding B1. There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.

The project site is constrained by geotechnical issues, a “Restricted Use Area” and steep slopes. A flat pad is located north of the proposed single-family residence; however, the flat pad is the only area that can accommodate an evapo-transpiration AOWTS required for construction on the subject property. An evapo-transpiration AOWTS is required for the subject property because it is a drip dispersal system that minimizes the amount of moisture from permeating into the ground at the project site. In addition, the proposed project includes construction on manufactured slopes created by artificial fill resulting from construction of Seagull Way. Due to these special circumstances, the project necessitates construction of the single-family residence on slopes steeper than 2½ to 1. Due
to the topography and the slope instability of the remaining area on the project site, strict application of the zoning ordinance deprives the subject property of privileges enjoyed by other properties in the vicinity and under the same zoning designation.

**Finding B2.** The granting of such variance will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.

The project will meet all applicable building and engineering safety codes and will not be detrimental to the public’s interest, safety, health or welfare. The proposed residence and all development will be located out of the “Restricted Use Area” as recommended by the project geotechnical engineer. The proposed project also includes a soldier pile system to stabilize the project site. The project will not be detrimental to other properties or improvements in the same vicinity and zone.

The proposed project has been reviewed and approved by the City Biologist, City Environmental Health Administrator, City Geologist, City Public Works Department, and the LACFD. The project, as proposed or conditioned, was found to be consistent with applicable City goals and policies.

**Finding B3.** The granting of the variance will not constitute a special privilege to the applicant or property owner.

As discussed in Finding B1, granting the variance will not constitute a special privilege to the applicant or property owner because there are special circumstances on the project site that strict application of the zoning ordinance would deprive the property to be developed similarly to other properties within the vicinity and under the same zoning designation.

**Finding B4.** The granting of such variance will not be contrary to or in conflict with the general purposes and intent of this Chapter, nor to the goals, objectives and policies of the LCP.

Granting the variance is not contrary to or in conflict with the general purposes or intent of the zoning provisions nor contrary to or in conflict with the goals, objectives and policies of the LCP. As discussed in Finding B1, granting the requested variance will allow a portion of the proposed residence to be within the footprint of the previous residence.

**Finding B5.** For variances to environmentally sensitive habitat area buffer standards or other environmentally sensitive habitat area protection standards, that there is no other feasible alternative for siting the structure and that the development does not exceed the limits on allowable development area set forth in Section 4.7 of the Malibu LIP.

The proposed variance does not propose the reduction of ESHA protection standards. Therefore, this finding is not applicable.

**Finding B6.** For variances to stringline standards, that the project provides maximum feasible protection to public access as required by Chapter 2 of the Malibu LIP.

The proposed variance is not associated with stringline standards. Therefore, this finding is not applicable.
Finding B7. The variance request is consistent with the purpose and intent of the zone(s) in which the site is located. A variance shall not be granted for a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

The requested variance is for relief from a specific development standard and does not authorize a use or activity not otherwise permitted in the SF-M zoning district. The requested variance is for construction on slopes in excess of 2½ to 1 in order to accommodate a new single-family residence on the project site.

Finding B8. The subject site is physically suitable for the proposed variance.

Granting the variance will allow construction of a new single-family residence in an area that will be geologically re-enforced by a soldier pile system and out of the “Restricted Use Area” as recommended by the project geotechnical engineer. Additionally, the project will be required to satisfy all Building and Safety standards in the Building Plan Check process. The subject site is physically suitable for the proposed variance.

Finding B9. The variance complies with all requirements of state and local law.

The proposed project will comply with all applicable requirements of State and local law and is conditioned to comply with any relevant approvals, permits and licenses from the City of Malibu and the LACFD.

Finding B10. A variance shall not be granted that would allow reduction or elimination of public parking for access to the beach, public trails or parklands.

The proposed project does not include any reduction or elimination of public parking for access to the beach, public trails or parklands.

C. Site Plan Review for Structure Height in Excess of 18 feet (LIP Section 13.27.5)

LIP Section 13.27.5(A) requires that the City make four findings in the consideration and approval of a site plan review for construction in excess of the City’s base 18 feet in height up to 28 feet for a pitched roof. Two additional findings are required pursuant to M.M.C. Section 17.62.050. The proposed residence is 28 feet as measured from the finished grade. Based on the evidence contained within the record, the required findings for SPR No. 10-041 are made as follows.

Finding C1. The project is consistent with policies and provisions of the Malibu LCP.

The project has been reviewed for compliance with all relevant policies and provisions of the LCP. Based on site visits, inspections, and review of the visual analysis, it has been determined that the project is consistent with all LCP policies and provisions.

Finding C2. The project does not adversely affect neighborhood character.

Story poles were placed on the subject property to demonstrate the project’s potential for aesthetic
changes to the site relative to neighboring properties. On June 18, 2013, a site visit was conducted to inspect the story poles after installation. As demonstrated by the story poles, the project’s height and mass are similar to existing single-family residences within the same neighborhood. The project, as proposed and conditioned, does not adversely affect neighborhood character.

Finding C3. The project provides maximum feasible protection to significant public views as required by Chapter 6 of the Malibu LIP.

PCH, a designated Scenic Highway in the Malibu LUP, is located directly north of the subject property at a higher elevation. A berm shields the majority of the project from view from PCH; however, the story poles are fleetingly visible from a small break in the berm. In addition, the project site is at a lower elevation than PCH. Therefore, the project provides maximum feasible protection to significant public views.

Finding C4. The proposed project complies with all applicable requirements of state and local law.

The proposed project has received LCP conformance review by Planning Department, the City Biologist, City Environmental Health Administrator, City Geologist, the City Public Works Department and the LACFD. Prior to issuance of building permits, the project must have final approval by the City Environmental Sustainability Department. The proposed project complies with all applicable requirements of state and local law.

Finding C5. The project is consistent with the City’s general plan and local coastal program.

Parcels in the immediate vicinity are also zoned for residential use. The project is consistent with the rural residential designation for the site as noted in the General Plan and LCP and immediate vicinity.

Finding C6. The portion of the project that is in excess of 18 feet in height does not obstruct visually impressive scenes of the Pacific Ocean, offshore islands, Santa Monica Mountains, canyons, valleys or ravines from the main viewing area of any affected principal residence as defined in MMC Section 17.40.040(A)(17).

The proposed residence has a pitched roof with a maximum roof height of 28 feet. Single-family residences located within the neighboring properties are located to the east, west, and south of the project site and have views oriented toward the Pacific Ocean. When the story poles were installed in June 2013, two neighbors across the street on the landward side of PCH contacted staff regarding view obstruction concerns. On August 8, 2013, staff conducted a site visit to the two neighbors’ residences and determined that the story poles are only visible from a second story element in their homes. Pursuant to M.M.C. Section 17.40.040(A)(17), a primary view must be taken from the ground floor unless the primary living area is not located on the ground floor; in both instances, their primary living area (living room, dining room, kitchen, etc) were located on the ground floor. Staff explained to both neighbors’ why views from their second story could not be protected pursuant to the code during the site visit and provided them a copy of the code section. A third neighbor residing in a multiple-family complex located to the east submitted written correspondence regarding potential view obstruction based on a radius map; however, later retracted the opposition of the project due to view obstruction after seeing the story poles in person. Based on evaluation and site inspections, the story poles do not appear to result in obstruction of visually impressive scenes of the Pacific Ocean,
off-shore islands, Santa Monica Mountains, canyons, valleys, or ravines from the main viewing area of any affected principal residence as defined in M.M.C. Section 17.40.040(A)(17).

D. Environmentally Sensitive Habitat Area (LIP Chapter 4)

According to the LCP ESHA Overlay Map, the subject site does not contain ESHA. Pursuant to LIP Section 4.4.4(E), “new structures within existing, developed neighborhoods where the new structures will be located over 200 feet from an ESHA, as shown on the ESHA overlay map” shall not be subject to the provisions of LIP Section 4.4.2 with regard to the supplemental application requirement of a detailed biological study of the site, and shall not be subject to review by the Environmental Review Board (ERB). The findings in LIP Chapter 4 are not applicable.

E. Native Tree Protection (LIP Chapter 5)

No native trees are proposed to be removed as part of the project scope of work; therefore, the findings in LIP Chapter 5 are not applicable.

F. Scenic, Visual and Hillside Resource Protection (LIP Chapter 6)

The Scenic, Visual and Hillside Resource Protection Chapter governs those CDP applications concerning any parcel of land that is located along, within, or provide views to or is visible from any scenic area, scenic road or public viewing area. A berm shields the majority of the project from view from PCH; however, the story poles are fleetingly visible from a small break in the berm. In addition, the project site is at a lower elevation than PCH. Therefore, the findings in LIP Chapter 6 are not applicable.

G. Transfer of Development Credits (LIP Chapter 7)

Pursuant to LIP Section 7.2 the regulations requiring a transfer of development credit apply to any action to authorize a CDP for a land division or multi-family development. This CDP does not involve a land division or construction of multi-family development. Therefore, LIP Chapter 7 does not apply.

H. Hazards (LIP Chapter 9)

Pursuant to LIP Section 9.3, written findings of fact, analysis and conclusions addressing geologic, flood and fire hazards, structural integrity or other potential hazard must be included in support of all approvals, denials or conditional approvals of development located on a site or in an area where it is determined that the proposed project causes the potential to create adverse impacts upon site stability or structural integrity. The project was analyzed for the hazards listed in LIP Section 9.2(A)(1-7).

In summary, the proposed development is suitable for the intended use provided that the certified engineering geologist and/or geotechnical engineer’s recommendations and governing agency’s building codes are followed. The required findings provided by LIP Section 9.3 are made as follows.
Finding H1. The project, as proposed will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, or fire hazards due to project design, location on the site or other reasons.

The applicant submitted an Engineering Geologic Study prepared by Mountain Geology, Inc. dated October 22, 2010 and four addendum reports and a Geotechnical Engineering Report prepared by Coastline Geotechnical Consultants, Inc. dated November 30, 2010 and two addendum reports. These reports are on file at City Hall. In these reports, site-specific conditions were evaluated and recommendations were provided to address any pertinent issues.

Based on review of the above referenced reports, City GIS and associated information, it has been determined that:

1. The property is located within an earthquake-induced landslide zone;
2. The project site is not located within an earthquake fault zone;
3. The property is not located within the liquefaction zone;
4. Due to the elevation and distance from the coastline, the project site is at minimal risk of being impacted by tsunamis;
5. The development site is not located in a Federal Emergency Management Agency (FEMA) identified flood hazard area; and
6. The project site is located within an extreme fire hazard area.

The City Geologist, City Public Works Department, and LACFD have reviewed the project and found that there were no substantial risks to life and property related to any of the above hazards provided that their recommendations and those contained in the associated geotechnical reports are incorporated into the project design.

Landslide Hazard

According to the Seismic Hazards Map of the Malibu Beach Quadrangle, the site is located within an area subject to earthquake induced landslides. Slopes were analyzed by the geotechnical consultant, Coastline Geotechnical Consultant, Inc. for stability on the basis of cross-sections in the November 20, 2010 report. In order to meet the minimum factor of safety, the project geotechnical consultant recommended a solider pile system to stabilize the building pad and designate an area south of the building pad as “Restricted Use Area”. A quantitative determination of the seismically--induced landsliding potential within the project area shall be performed as recommended by the project geotechnical engineer. Said results shall be provided to the City Geologist for review in the building plan check process. The project will incorporate all recommendations contained in the above cited geotechnical reports and all foundation plans will be reviewed by the geotechnical consultant prior to permit issuance. The proposed soldier pile system serves to isolate and protect the proposed residence and OWTS from any future movement of the mapped landslides. With the inclusion of the solider pile system, the proposed project meets the minimum 1.5 factor of safety requirement.
Fire Hazard

The entire city limits of Malibu are located within the fire hazard zone. The City is served by the LACFD, as well as the California Department of Forestry, if needed. In the event of major fires, the County has mutual aid agreements with cities and counties throughout the state so that additional personnel and firefighting equipment can augment the LACFD. As such, the proposed project as conditioned will not be subject to nor increase the instability of the site or structural integrity involving wild fire hazards. The condition of approval included in Planning Commission Resolution No. 11-91 requires that the property owner indemnify and hold harmless the City, its officers, agents, and employees against any and all claims, demands, damages, costs, and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from development on a beach and wildfire exists as an inherent risk to life and property. In addition, the LACFD has determined that the project is required to have 1,000 gallons per minute at 20 pounds per square inch for a two-hour duration fire flow rate. The applicant / property owner is required to provide fire flow information to the LACFD during Building Plan Check to satisfy LACFD requirements.

The project will incorporate all recommendations contained in the above cited geotechnical reports and conditions required by the City Geologist, City Public Works Department and the LACFD. As such, the proposed project will not increase instability of the site or structural integrity from geologic, flood or any other hazards. Final plans will be reviewed and approved by the City Geologist prior to the issuance of a building permit.

Finding H2. The project, as conditioned, will not have significant adverse impacts on site stability or structural integrity from geologic, flood or fire hazards due to required project modifications, landscaping or other conditions.

As discussed previously in Finding H1, the proposed project, as designed, conditioned, and approved by the City Geologist, City departments and the LACFD, will not have any significant adverse impacts on the site stability or structural integrity.

Finding H3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As discussed previously in Finding A3, the project, as proposed and conditioned, is the least environmentally damaging alternative.

Finding H4. There are no alternatives to development that would avoid or substantially lessen impacts on site stability or structural integrity.

As discussed previously in Finding A1, the proposed project, as conditioned and approved by City departments and the LACFD, will not have any significant adverse impacts on the site stability or structural integrity.
Finding H5. Development in a specific location on the site may have adverse impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified Malibu LCP.

As discussed previously in Finding H1, the proposed project, as conditioned and approved by City departments and the LACFD, will not have any significant adverse impacts on site stability or structural integrity. Therefore, no adverse impacts are anticipated to hazards or to sensitive resource protection policies contained in the LCP.

I. Shoreline and Bluff Development (LIP Chapter 10)

LIP Section 10.3 requires that shoreline and bluff development findings be made if the project is anticipated to result in potentially significant adverse impacts on coastal resources, including public access and shoreline sand supply. The project is not located along the shoreline or on a bluff; therefore, the findings in LIP Chapter 10 are not applicable.

J. Public Access (LIP Chapter 12)

LIP Chapter 12 requires public access for lateral, bluff-top, and vertical access near the ocean, as well as trail access, and recreational access when applicable. The project is not located along the shoreline; therefore, does not have the potential to offer lateral or vertical access to the ocean. The project is not located on a bluff; therefore, blufftop access is not applicable. No trails are located within the project vicinity. The proposed project will not adversely affect, either individually or cumulatively, the ability of the public to reach and use public tidelands and coastal resources; therefore, the findings in LIP Chapter 12 are not applicable.

K. Land Division (LIP Chapter 15)

This project does not involve a division of land as defined in LIP Section 15.1. Therefore, the findings in LIP Chapter 15 do not apply.

L. Onsite Wastewater Treatment System (LIP Chapter 18)

LIP Chapter 18 addresses OWTS. LIP Section 18.7 includes specific siting, design and performance requirements. The project includes an AOWTS which has been reviewed by the City Environmental Health Administrator and found to meet the minimum requirements of the Malibu Plumbing Code, the M.M.C. and the LCP. The proposed AOWTS will meet all applicable requirements and operating permits will be required. The new system will utilize a 1,500 gallon tank with ultraviolet disinfection. The system will also utilize three different zones of drip dispersal fields.

An operation and maintenance contract and recorded covenant covering such must be in compliance with City of Malibu Environmental Health requirements. Conditions of approval have been included in this resolution which requires continued operation, maintenance and monitoring of onsite facilities.
Section 4. Planning Commission Action.

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves Coastal Development Permit No. 11-019 and associated requests, subject to the following conditions.

Section 5. Conditions of Approval.

1. The property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City’s actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City’s actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City’s expenses incurred in its defense of any lawsuit challenging the City’s actions concerning this project.

2. Approval of this application is to allow for the project described herein. The scope of work approved includes:
   a. 5,820 square foot single-family residence (4,017 first story, 1,803 second story)
   b. 499 square foot attached garage;
   c. Associated decks and walkways;
   d. Soldier pile foundation system;
   e. Driveway;
   f. Retaining wall;
   g. Fire-Department turnaround;
   h. Drainage improvements;
   i. Landscaping;
   j. Grading;
   k. Decomposed granite driveway and fire department turnaround; and
   l. Evapo-transpiration AOWTS

3. Subsequent submittals for this project shall be in substantial compliance with plans on-file with the Planning Department, dated October 9, 2013. In the event the project plans conflict with any condition of approval, the condition shall take precedence.

4. Pursuant to LIP Section 13.18.2, this permit and rights conferred in this approval shall not be effective until the property owner signs and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Department within 10 days of this decision and prior to issuance of any development permits.

5. The applicant shall submit three (3) complete sets of plans to the Planning Department for consistency review and approval prior to the issuance of any building or development permits.

6. This resolution, signed Affidavit and all referral sheets attached to the agenda report for this project shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City of Malibu Environmental and
Building Safety Division for plan check, and the City of Malibu Public Works/Engineering Services Department for an encroachment permit (as applicable).

7. The coastal development permit shall be null and void if the project has not commenced within three (3) years after issuance of the permit. Extension of the permit may be granted by the approving authority for due cause. Extensions shall be requested in writing by the applicant or authorized prior to expiration of the three-year period and shall set forth the reasons for the request.

8. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Manager upon written request of such interpretation.

9. All structures shall conform to requirements of the City of Malibu Environmental and Building Safety Division, City Geologist, City Environmental Health Administrator, City Biologist, City Coastal Engineer, City Public Works Department, Los Angeles County Water District No. 29 and the Los Angeles County Fire Department, as applicable. Notwithstanding this review, all required permits shall be secured.

10. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Manager, provided such changes achieve substantially the same results and the project is still in compliance with the Municipal Code and the Local Coastal Program. Revised plans reflecting the minor changes and additional fees shall be required.

11. Pursuant to LIP Section 13.20, development pursuant to an approved CDP shall not commence until the CDP is effective. The CDP is not effective until all appeals, including those to the California Coastal Commission, have been exhausted. In the event that the California Coastal Commission denies the permit or issues the permit on appeal, the coastal development permit approved by the City is void.

12. Prior to final planning approval, the property owner shall provide a copy of a valid Operating Permit pursuant to Malibu Municipal Code Section 15.14.030 or an Operating Permit application fee receipt.

**Cultural Resources**

13. In the event that potentially important cultural resources are found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Director can review this information. Thereafter, the procedures contained in LIP Chapter 11 and those in M.M.C. Section 17.54.040(D)(4)(b) shall be followed.
14. If human bone is discovered during geologic testing or during construction, work shall immediately cease and the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. Section 7050.5 requires notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.

**Building Plan Check**

**Solid Waste**

15. The applicant/property owner shall contract with a City approved hauler to facilitate the recycling of all recoverable/recyclable material. Recoverable material shall include but shall not be limited to: asphalt, dirt and earthen material, lumber, concrete, glass, metals, and drywall.

**Geology**

16. All recommendations of the consulting certified engineering geologist or geotechnical engineer and/or the City Geologist shall be incorporated into all final design and construction including foundations, grading, sewage disposal, and drainage. Final plans shall be reviewed and approved by the City Geologist prior to the issuance of a grading permit.

17. Final plans approved by the City Geologist shall be in substantial conformance with the approved CDP relative to construction, grading, sewage disposal and drainage. Any substantial changes may require a CDP amendment or a new CDP.

**Onsite Wastewater Treatment System**

18. Prior to the issuance of a building permit the applicant shall demonstrate, to the satisfaction of the Building Official, compliance with the City of Malibu's Onsite Wastewater Treatment regulations including provisions of LIP Section 18.9 related to continued operation, maintenance and monitoring of the AOWTS.

19. Prior to final Environmental Health approval, a final AOWTS plot plan shall be submitted showing an AOWTS design meeting the minimum requirements of the Malibu Plumbing Code (MPC) and the LCP, including necessary construction details, the proposed drainage plan for the developed property and the proposed landscape plan for the developed property. The AOWTS plot plan shall show essential features of the AOWTS and must fit onto an 11 inch by 17 inch sheet leaving a five inch margin clear to provide space for a City applied legend. If the scale of the plans is such that more space is needed to clearly show construction details and/or all necessary setbacks, larger sheets may also be provided (up to a maximum size of 18 inches by 22 inches).

20. A final design and system specifications shall be submitted as to all components (i.e. alarm system, pumps, timers, flow equalization devices, backflow devices, etc.) proposed for use in the construction of the proposed AOWTS. For all AOWTS, final design drawings and calculations must be signed by a California registered civil engineer, a registered...
environmental health specialist or a professional geologist who is responsible for the design. The final AOWTS design drawings shall be submitted to the City Environmental Health Administrator with the designer's wet signature, professional registration number and stamp (if applicable).

21. Any above-ground equipment associated with the installation of the AOWTS shall be screened from view by a solid wall or fence on all four sides. The fence or walls shall not be higher than 42 inches tall.

22. The final design report shall contain the following information (in addition to the items listed above).
   a. Required treatment capacity for wastewater treatment and disinfection systems. The treatment capacity shall be specified in terms of flow rate, gallons per day, and shall be supported by calculations relating the treatment capacity to the number of bedroom equivalents, plumbing fixture equivalents, and/or the subsurface effluent dispersal system acceptance rate. The fixture unit count must be clearly identified in association with the design treatment capacity, even if the design is based on the number of bedrooms. Average and peak rates of hydraulic loading to the treatment system shall be specified in the final design;
   b. Description of proposed wastewater treatment and/or disinfection system equipment. State the proposed type of treatment system(s) (e.g., aerobic treatment, textile filter ultraviolet disinfection, etc.); major components, manufacturers, and model numbers for "package" systems; and conceptual design for custom engineered systems;
   c. Specifications, supporting geology information, and percolation test results for the subsurface effluent dispersal portion of the onsite wastewater disposal system. This must include the proposed type of effluent dispersal system (drainfield, trench, seepage pit subsurface drip, etc.) as well as the system's geometric dimensions and basic construction features. Supporting calculations shall be presented that relate the results of soils analysis or percolation/infiltration tests to the projected subsurface effluent acceptance rate, including any unit conversions or safety factors. Average and peak rates of hydraulic loading to the effluent dispersal system shall be specified in the final design. The projected subsurface effluent acceptance rate shall be reported in units of total gallons per day and gallons per square foot per day. Specifications for the subsurface effluent dispersal system shall be shown to accommodate the design hydraulic loading rate (i.e., average and peak AOWTS effluent flow, reported in units of gallons per day). The subsurface effluent dispersal system design must take into account the number of bedrooms, fixture units and building occupancy characteristics; and
   d. All final design drawings shall be submitted with the wet signature and typed name of the AOWTS designer. If the scale of the plan is such that more space is needed to clearly show construction details, larger sheets may also be provided (up to a maximum size of 18 inch by 22 inch, for review by Environmental Health). Note: For AOWTS final designs, full-size plans are required for review by Building Safety and/or Planning.

23. A covenant running with the land shall be executed by the property owner and recorded with the Los Angeles County Recorder's Office. Said covenant shall serve as constructive notice to any successors in interest that: 1) the private sewage disposal system serving the
development on the property does not have a 100 percent expansion effluent dispersal area (i.e., replacement disposal field(s) or seepage pit(s)), and 2) if the primary effluent dispersal area fails to drain adequately, the City of Malibu may require remedial measures including, but not limited to, limitations on water use enforced through operating permit and/or repairs, upgrades or modifications to the private sewage disposal system. The recorded covenant shall state and acknowledge that future maintenance and/or repair of the private sewage disposal system may necessitate interruption in the use of the private sewage disposal system and, therefore, any building(s) served by the private sewage disposal system may become non-habitable during any required future maintenance and/or repair. Said covenant shall be in a form acceptable to the City Attorney and approved by the Environmental Sustainability Department.

24. Proof of ownership of subject property shall be submitted to the City Environmental Health Administrator.

25. An operations and maintenance manual specified by the AOWTS designer shall be submitted to the City Environmental Health Administrator. This shall be the same operations and maintenance manual submitted to the owner and/or operator of the proposed AOWTS following installation.

26. Prior to final Environmental Health approval, a maintenance contract executed between the owner of the subject property and an entity qualified in the opinion of the City of Malibu to maintain the proposed AOWTS after construction shall be submitted. Only original wet signature documents are acceptable and shall be submitted to the City Environmental Health Administrator.

27. Prior to final Environmental Health approval, a covenant which runs with the land shall be executed between the City of Malibu and the holder of the fee simple absolute as to subject real property and recorded with the Los Angeles County Recorder’s Office. Said covenant shall serve as constructive, notice to any future purchaser for value that the AOWTS serving subject property is an alternative method of onsite wastewater disposal pursuant to the City of Malibu Uniform Plumbing Code, Appendix K, Section 10). Said covenant shall be provided by the City of Malibu Environmental Health Administrator and shall be submitted to the City of Malibu with proof of recordation by the Los Angeles County Recorder.

28. The City Geologist and Geotechnical Engineer’s final approval shall be submitted to the City Environmental Health Administrator.

29. The City Biologist’s final approval shall be submitted to the City Environmental Health Administrator. The City Biologist shall review the AOWTS design to determine any impact on Environmentally Sensitive Habitat Area if applicable.

30. In accordance with M.M.C. Chapter 15.14, an application shall be made to the Environmental and Building Safety Division for an OWTS operating permit.
31. The non-exempt grading for the project shall not exceed a total of 1,000 cubic yards, cut and fill.

32. The Total Grading Yardage Verification Certificate (dated April 9, 2013) shall be copied onto the coversheet of the Grading Plan. No alternative formats or substitute may be accepted.

33. This project proposes grading on slopes equal to or greater than 25 percent. Grading permits shall not be issued between November 1 and March 31 each year. Projects approved for grading permit shall not receive grading permits unless the project can be rough graded before November 1.

34. The applicant shall present evidence reflecting the right to discharge to the driveway, Latigo Shore Drive, and that the properties on Latigo Shore Drive will not be impacted by flooding caused by discharge of drainage on the driveway. A Grading and Drainage Plan containing the following information shall be approved, and submitted to the Public Works Department, prior to the issuance of grading permits for the project. Special attention shall be directed to the proposed point of discharge.
   a. The existing and proposed square footage of impervious coverage on the property shall be shown on the grading plan (including separate areas for buildings, driveways, walkways, parking, tennis courts and pool decks);
   b. The limits of land to be disturbed during project development shall be delineated and a total area shall be shown on this plan. Areas disturbed by grading equipment beyond the limits of grading, areas disturbed for the installation of the septic system, and areas disturbed for the installation of the detention system shall be included within the area delineated;
   c. The grading limits shall include the temporary cuts made for retaining walls, buttresses and over excavations for fill slopes; and
   d. Private storm drain systems shall be shown on this plan. Systems greater than 12 inch in diameter shall also have a plan and profile for the system included with this plan.

35. A Wet Weather Erosion and Sediment Control Plan is required, and shall be submitted to the Public Works Department prior to the issuance of grading permits if grading or construction activity is anticipated to occur during the rainy season. The following elements shall be included in this plan:
   a. Locations where concentrated runoff will occur;
   b. Plans for the stabilization of disturbed areas of the property, landscaping and hardscape, along with the proposed schedule for the installation of protective measures;
   c. Location and sizing criteria for silt basins, sandbag barriers and silt fencing; and
   d. Stabilized construction entrance and a monitoring program for the sweeping of material tracked offsite.

36. A Storm Water Pollution Prevention Plan (SWPPP) shall be submitted for review and approval by the Public Works Department prior to issuance of building permits. This plan shall include:
a. Designated areas for the storage of construction materials that do not disrupt drainage patterns or subject the material to erosion by site runoff; 
b. Designated areas for the construction portable toilets that separates them from storm water runoff and limits the potential for upset; and 
c. Designated areas for disposal and recycling facilities for solid waste separated from the site drainage system to prevent the discharge of runoff through the waste.

37. Storm drainage improvements are required to mitigate increased runoff generated by property development. The applicant shall have the choice of one method specified within LIP Section 17.3.2.B.2.

38. A Storm Water Management Plan (SWMP) shall be submitted for review and approval of the Public Works Director. The SWMP shall be prepared in accordance with the LIP Section 17.3.2 and all other applicable ordinances and regulations.

39. Earthmoving during the rainy season (extending from November 1 to March 31) shall be prohibited for development that includes grading on slopes greater than 4 to 1. Approved grading operations shall not be undertaken unless there is sufficient time to complete grading operations before the rainy season. If grading operations are not completed before the rainy season begins, grading shall be halted and temporary erosion control measures shall be put into place to minimize erosion until grading resumes after March 31, unless the Planning Director or Deputy Building Official determines that completion of grading would be more protective of resources.

40. The Deputy Building Official may approve grading during the rainy season to remediate hazardous geologic conditions that endanger public health and safety.

41. Exported soil from a site shall be taken to the Los Angeles County Landfill or to a site with an active grading permit and the ability to accept the material in compliance with LIP Section 8.3.

42. All cut and fill slopes shall be stabilized with landscaping at the completion of final grading.

**Water Quality/ Water Service**

43. Prior to the issuance of a building permit, the applicant shall submit an updated Will Serve letter from Los Angeles County Waterworks District No. 29 to the Planning department indicating the ability of the property to receive adequate water service.

**Construction / Framing**

44. Construction hours shall be limited to Monday through Friday from 7:00 a.m. to 7:00 p.m. and Saturdays from 8:00 a.m. to 5:00 p.m. No construction activities shall be permitted on Sundays or City-designated holidays.
45. Construction management techniques, including minimizing the amount of equipment used simultaneously and increasing the distance between emission sources, shall be employed as feasible and appropriate. All trucks leaving the construction site shall adhere to the California Vehicle Code. In addition, construction vehicles shall be covered when necessary; and their tires rinsed prior to leaving the property.

46. All new development, including construction, grading, and landscaping shall be designed to incorporate drainage and erosion control measures prepared by a licensed engineer that incorporate structural and non-structural Best Management Practices (BMPs) to control the volume, velocity and pollutant load of storm water runoff in compliance with all requirements contained in LIP Chapter 17, including:
   a. Construction shall be phased to the extent feasible and practical to limit the amount of disturbed areas present at a given time.
   b. Grading activities shall be planned during the southern California dry season (April through October).
   c. During construction, contractors shall be required to utilize sandbags and berms to control runoff during on-site watering and periods of rain in order to minimize surface water contamination.
   d. Filter fences designed to intercept and detain sediment while decreasing the velocity of runoff shall be employed within the project site.

47. When framing is complete, a site survey shall be prepared by a licensed civil engineer or architect that states the finished ground level elevation and the highest roof member elevation. Prior to the commencement of further construction activities, said document shall be submitted to the assigned Building Inspector and Planning department for review and sign off on framing.

Lighting

48. Exterior lighting shall be minimized, shielded, or concealed and restricted to low intensity features, so that no light source is directly visible from public view. Permitted lighting shall conform to the following standards:
   a. Lighting for walkways shall be limited to fixtures that do not exceed two feet in height and are directed downward, and limited to 850 lumens (equivalent to a 60 watt incandescent bulb);
   b. Security lighting controlled by motion detectors may be attached to the residence provided it is directed downward and is limited to 850 lumens;
   c. Driveway lighting shall be limited to the minimum lighting necessary for safe vehicular use. The lighting shall be limited to 850 lumens;
   d. Lights at entrances as required by the Building Code shall be permitted provided that such lighting does not exceed 850 lumens;
   e. Site perimeter lighting shall be prohibited; and
   f. Outdoor decorative lighting for aesthetic purposes is prohibited.
49. No permanently installed lighting shall blink, flash, or be of unusually high intensity or brightness. Lighting levels on any nearby property from artificial light sources on the subject property(ies) shall not produce an illumination level greater than one foot candle.

50. Night lighting from exterior and interior sources shall be minimized. All exterior lighting shall be low intensity and shielded directed downward and inward so there is no offsite glare or lighting of natural habitat areas. High intensity lighting of the shore is prohibited.

**Biology/Landscaping**

51. Invasive plant species, as determined by the City of Malibu, are prohibited.

52. Vegetation shall be situated on the property so as not to significantly obstruct the primary view from private property at any given time (given consideration of its future growth).

53. The landscape plan shall prohibit the use of building materials treated with toxic compounds such as copper arsenate.

54. The landscape and fuel modification plan has been conditioned to protect natural resources in accordance with the Local Coastal Program. All areas shall be planted and maintained as described in the landscape and fuel modification plan. Failure to comply with the landscape conditions is a violation of the conditions of approval for this project.

55. Grading shall be scheduled only during the dry season from April 1 through October 31. If it becomes necessary to conduct earthmoving activities from November 1 through March 31, a comprehensive erosion control plan shall be submitted to the City Biologist for approval prior to the issuance of a grading permit and implemented prior to initiation of vegetation removal and/or earthmoving activities.

56. Native species of the Santa Monica Mountains, characteristic of the local habitat, shall be used on graded slopes or where slope plantings are required for slope stabilization, erosion control, and watershed protection. Plants should be selected to have a variety of rooting depths. A spacing of 15 feet between large woody (≥10-foot canopy) shrubs is recommended by the LACFD. Lawns are prohibited on slopes > 5%.

57. Site preparation activities (e.g. grubbing, grading, etc.) scheduled between February 1 and August 30 will require nesting bird surveys by a qualified biologist prior to initiation of grading activities. Should active nest be identified, a buffer area no less than 300 feet (500 feet for raptors) shall be fenced off until it is determined by a qualified biologist that that nest is no longer active. A report discussing the results of nesting bird surveys shall be submitted to the City Biologist prior to any vegetation removal onsite.

58. Installation and planting of vegetation which requires permanent irrigation is prohibited.
Fire Department

59. The applicant shall submit a Final Fuel Modification Plan to the LACFD for approval prior to the issuance of final building permits.

60. A hydrant is required for the proposed project. The applicant shall submit plans to the LACFD for approval of the hydrant during Building Plan Check.

Prior to Occupancy

61. Prior to issuing a Certificate of Occupancy, the City Biologist shall inspect the project site and determine that all planning conditions to protect natural resources are in compliance with the approved plans.

62. Prior to Final Building inspection, the applicant shall provide the Environmental Sustainability Department with a Final Waste Reduction and Recycling Summary Report (Summary Report). The Final Summary Report shall designate all material that were land filled or recycled, broken down by material types. The Environmental Sustainability Department shall approve the final Summary Report.

63. The applicant shall request a final planning inspection prior to final inspection by the City of Malibu Environmental and Building Safety Division. A Certificate of Occupancy shall not be issued until the Planning Department has determined that the project complies with this coastal development permit. A temporary Certificate of Occupancy may be granted at the discretion of the Planning Director, provided adequate security has been deposited with the City to ensure compliance should the final work not be completed in accordance with this permit.

64. Any construction trailer, storage equipment or similar temporary equipment not permitted as part of the approved scope of work shall be removed prior to final inspection and approval, and if applicable, the issuance of the certificate of occupancy.

Deed Restrictions

65. The property owner is required to acknowledge, by recordation of a deed restriction, that the property is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff, and that the property owner assumes said risks and waives any future claims of damage or liability against the City of Malibu and agrees to indemnify the City of Malibu against any liability, claims, damages or expenses arising from any injury or damage due to such hazards. The property owner shall provide a copy of the recorded document to Planning department staff prior to final planning approval.
66. The property owner is required to execute and record a deed restriction which shall indemnify and hold harmless the City, its officers, agents, and employees against any and all claims, demands, damages, costs and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property. The property owner shall provide a copy of the recorded document to Planning department staff prior to final planning approval.

Fixed Conditions

67. This coastal development permit shall run with the land and bind all future owners of the property.

68. Violation of any of the conditions of this approval may be cause for revocation of this permit and termination of all rights granted there under.

Section 6. Certification.

The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 3rd day of February 2014.

MKE PIERSON, Planning Commission Chair

ATTEST:

PATRICIA SALAZAR, Recording Secretary

LOCAL APPEAL - A decision made by the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and filing fee, as specified by the City Council. Appeal forms may be found online at www.malibucity.org, in person at City Hall, or by calling (310) 456-2489, ext. 245.

COASTAL COMMISSION APPEAL – An aggrieved person may appeal the Planning Commission’s decision to the Coastal Commission within 10 working days of the issuance of the City’s Notice of Final Action. Appeal forms may be found online at www.coastal.ca.gov or in person at the Coastal Commission South Central Coast District office located at 89 South California Street in Ventura, or by calling (805) 585-1800. Such an appeal must be filed with the Coastal Commission, not the City.
I CERTIFY THAT THE FOREGOING RESOLUTION NO. 14-11 was passed and adopted by the Planning Commission of the City of Malibu at the Regular meeting held on the 3rd day of February 2014, by the following vote:

AYES:  4  COMMISSIONERS: JENNINGS, STACK, BROTMAN, AND PIERSON
NOES:  1  COMMISSIONER MAZZA
ABSTAIN:  0
ABSENT:  0

PATRICIA SALAZAR, Recording Secretary